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THOMAS P. FALLQUIST
SPOKANE COUNTY

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

REGAL SATELLITE, LLC; BRADY
KENNETH NELSON, individually and as
part of his marital community;
Defendants.

NO.

06205088-1

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT,
CHAPTER 19.86 RCW; THE
CHARITABLE SOLICITATIONS
ACT, CHAPTER 19.09 RCW; AND
RCW 80.36.400

COMES NOW PLAINTIFF, State of Washington, by and through its attorneys
Rob McKenna, Attorney General and Shannon E. Smith, Senior Counsel, and Jack G. Zurlini,
Jr., Assistant Attorney General, and brings this action against Defendants named herein,
alleging as follows:

I. JURISDICTION AND VENUE

1.1 This Complaint is filed and these proceedings are instituted under the
provisions of the Consumer Protection Act, Chapter 19.86 RCW; the Charitable Solicitations
Act, Chapter 19.09 RCW, and the laws governing the telecommunications network,
RCW 80.36.

1.2 The violations alleged in this Complaint have been and are being committed in
whole or in part in Spokane County, Washington, by Defendants named herein.

1.3 The Attorney General is authorized to commence this action pursuant to RCW 19.86.080; 19.86.140; 19.09.340(2); 80.36.400(3).

II. DEFENDANTS

2.1 At all times material to this action, Defendant Regal Satellite, LLC ("Regal") was a Washington for-profit corporation and an independent contractor for Dish Network and Sirius Satellite Radio, which are companies that provide satellite television and radio programming, respectively. Regal's principal place of business is at 10905 E. Montgomery Drive, No. 4, Spokane, WA 99206. Regal's advertising includes print media, door-to-door sales, and telemarketing. Regal also owns and operates a Web site, www.regalsatellite.com.

2.2 Defendant Brady Kenneth Nelson is owner and president of Regal, and, as such, controls its policies, activities, and practices, including those alleged in this Complaint. Brady Nelson also is a director of The Cancer Relief Fund, and, as such, controls its policies, activities, and practices, including those alleged in this Complaint. Defendant Brady Nelson resides at 2820 S. Sunnybrook Road, Veradale, WA 99037. Defendant is married to Danna B. Nelson, and together they constitute a marital community. All actions taken by Defendant Brady Nelson as alleged in the Complaint herein are for the benefit of his marital community.

III. NATURE OF TRADE OR COMMERCE

3.1 At all times material to this action, Defendants have advertised, marketed, and sold satellite television and radio service, including services provided by provided by DISH Network. Defendants advertise, market, and sell DISH Network satellite television service to consumers in Spokane County, and elsewhere in Washington and in other states. Defendants are in competition with others engaged in the advertising, marketing, and sale of satellite television service in and from Washington.

3.2 At all times material to this action, the Defendants have solicited charitable contributions on behalf of The Cancer Relief Fund and/or have represented that a portion of the proceeds of the sale of satellite television service by Regal will be donated to The Cancer

1 Relief Fund. Defendant Brady Nelson, his spouse Danna B. Nelson, and Ryan A. Nelson
2 founded The Cancer Relief Fund and are its officers or directors.

3 **IV. FACTS**

4 4.1 At all times material to this action, Defendants have engaged in telemarketing
5 of satellite television service. Defendants are authorized retailer for DISH Network.

6 4.2 An "automatic dialing and announcing device" (ADAD) is a device that
7 automatically dials telephone numbers and plays a recorded message once a connection is
8 made. In Washington State, RCW 80.36.400 prohibits the use of ADADs for purposes of
9 commercial solicitation.

10 4.3 Defendants have used ADADs for the commercial purpose of selling satellite
11 television service.

12 4.4 At all times material to this action, Defendants have illegally contacted by
13 telephone consumers registered on the national "Do Not Call List" for the purpose of
14 marketing and selling satellite television service.

15 4.5 Defendants informed consumers that Defendants were permitted to use
16 ADADs in their telemarketing activities and call consumers whose telephone numbers are
17 listed on the national "Do Not Call" registry because Regal is associated with a charity, The
18 Cancer Relief Fund. Defendants informed consumers that the Attorney General's Office had
19 authorized their activities because Regal is associated with a charity.

20 4.6 Defendant Brady Nelson, his spouse Danna Nelson, and Ryan Nelson formed
21 Defendant The Cancer Relief Fund, a Washington non-profit corporation, and incorporated
22 into the Defendants' telemarketing activities the representation to consumers that a portion of
23 Regal's proceeds from the sale of satellite television service would be donated to Defendant
24 The Cancer Relief Fund.

25 4.7 A person or entity that that solicits charitable contributions on behalf of
26 charitable organizations in the State of Washington as a commercial fundraiser or commercial

1 coadverturer must be registered with the Secretary of State pursuant to RCW 19.09.065. At
2 no time material to this action was Defendant Regal Satellite registered as a commercial
3 fundraiser or coventurer to solicit charitable contributions on behalf of The Cancer Relief
4 Fund as required by RCW 19.09.100(15), (16), and WAC 434-120-212(1).

5 **V. FIRST CAUSE OF ACTION**

6 **(Using ADADs for Purposes of Commercial Solicitation)**

7 **5.1** Plaintiff realleges paragraphs 1.1 through 4.8 and incorporates them herein as
8 if set forth in full.

9 **5.2** Defendants repeatedly used automatic dialing and announcing devices
10 (ADADs) to place telephone calls to consumers in Washington and other states to sell satellite
11 television service to such consumers over the telephone.

12 **5.3** The conduct described in paragraph 5.2 violates RCW 80.36.400(2). Pursuant
13 to RCW 80.36.400(3), the use of ADADs for purposes of commercial solicitation is a *per se*
14 violation of the Consumer Protection Act, RCW 19.86.

15 **VI. SECOND CAUSE OF ACTION**

16 **(Misrepresenting Ability to Use ADADs)**

17 **6.1** Plaintiff realleges paragraphs 1.1 through 5.3 and incorporates them herein as
18 if set forth in full.

19 **6.2** During their telemarketing activities, misrepresented directly or by implication
20 to consumers, or directed others to misrepresent directly or by implication to consumers, that
21 Defendants were permitted to use ADADs because Defendants are associated with a charity,
22 The Cancer Relief Fund, and that a portion of the revenue from the sale is donated to The
23 Cancer Relief Fund.

24 **6.3** During their telemarketing activities, Defendants misrepresented directly or by
25 implication to consumers, or directed others to misrepresent directly or by implication to
26 consumers, that the Attorney General allowed Defendants to used ADADs because

1 Defendants are associated with The Cancer Relief Fund and that a portion of the revenue from
2 the sale is donated to The Cancer Relief Fund.

3 **6.4** The conduct described in paragraphs 6.2 and 6.3 has the capacity to mislead a
4 substantial number of consumers and constitutes unfair or deceptive acts or practices in trade
5 or commerce, and unfair methods of competition in violation of RCW 19.86.020.

6 **VII. THIRD CAUSE OF ACTION**

7 **(Misrepresenting Ability to Call Numbers On the National Do Not Call Registry)**

8 **7.1** Plaintiff realleges paragraphs 1.1 through 6.4 and incorporates them herein as
9 if set forth in full.

10 **7.2** During telemarketing activities, Defendants misrepresented to consumers
11 directly or by implication, or directed others to misrepresent to consumers directly or by
12 implication, that Defendants were permitted to call consumers whose telephone numbers are
13 listed on the national Do Not Call registry because Defendants are associated with a charity,
14 The Cancer Relief Fund, and that a portion of the revenue from the sale is donated to The
15 Cancer Relief Fund.

16 **7.3** During telemarketing activities, Defendants Regal, misrepresented to
17 consumers directly or by implication, or directed others to misrepresent to consumers directly
18 or by implication, that the Attorney General allowed Defendants to call consumers whose
19 telephone numbers are listed on the national Do Not Call registry because Defendants are
20 associated with The Cancer Relief Fund and that a portion of the revenue from the sale is
21 donated to The Cancer Relief Fund.

22 **7.4** The conduct described in paragraphs 7.2 and 7.3 has the capacity to mislead a
23 substantial number of consumers and constitutes unfair or deceptive acts or practices in trade
24 or commerce, and unfair methods of competition in violation of RCW 19.86.020.

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1 **VIII. FOURTH CAUSE OF ACTION**

2 **(Soliciting Charitable Donations Without Registering As a Commercial Coventurer)**

3 8.1 Plaintiff realleges paragraphs 1.1 through 7.4 and incorporates them herein as
4 if set forth in full.

5 8.2 During telemarketing activities, Defendants represented to consumers, or
6 directed others to represent to consumers, that if the consumers purchase satellite television
7 service from Defendants a portion of the sales price or a certain sum of money will be donated
8 to a charity, The Cancer Relief Fund.

9 8.3 At no time relevant to this action were Defendants registered as a commercial
10 coventurer with the Secretary of State.

11 8.4 The conduct described in paragraphs 8.2 and 8.3 violates the Charitable
12 Solicitations Act, specifically RCW 19.09.065, 19.09.100(15), (16), (18), and
13 WAC 434-120-212(1). Pursuant to RCW 19.09.340, violations of the Charitable Solicitations
14 Act are *per se* violations of the Consumer Protection Act, RCW 19.86.

15 8.5 Notwithstanding RCW 19.09.340, the conduct described in paragraphs 8.2 and
16 8.3 has the capacity to mislead a substantial number of consumers and constitutes unfair or
17 deceptive acts or practices in trade or commerce, and unfair methods of competition in
18 violation of RCW 19.86.020.

19 **IX. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, State of Washington, prays for relief as follows:

21 9.1 That the Court adjudge and decree that Defendants have engaged in the
22 conduct complained of herein.

23 9.2 That the Court adjudge and decree that the conduct complained of herein
24 constitutes unfair or deceptive acts and practices and unfair methods of competition in
25 violation of the Consumer Protection Act, Chapter 19.86 RCW.

9.3 That the Court issue a permanent injunction enjoining and restraining Defendants, and their representatives, successors and assigns, officers, agents, servants, employees and all other persons acting or claiming to act for, or on behalf of, or acting in concert or participating with Defendants, from continuing or engaging in unlawful conduct complained of herein.

9.4 That the Court assess a civil penalty, pursuant to RCW 19.86.140, of up to \$2,000 per violation against each of the Defendants for each violation of RCW 19.86.020 caused by the conduct complained of herein.

9.5 That the Court make such orders pursuant to RCW 19.86.020 as it deems appropriate to provide for restitution to consumers for money or property acquired by Defendants as a result of the conduct complained of herein.

9.6 That the Court make such orders pursuant to RCW 19.86.020 to provide that Plaintiff, State of Washington, have and recover from Defendants the costs of this action, including reasonable attorneys' fees.

9.7 That the Court order such other relief as it may deem just and proper to fully and effectively dissipate the effects of the conduct complained of herein, or which may otherwise seem proper to the Court.

DATED this 20th day of November, 2006.

ROB MCKENNA
Attorney General

~~SHANNON E. SMITH, WSBA #19077~~
~~JACK G. ZERLIN, WSBA # 30621~~
~~Assistant Attorneys General~~
~~Attorneys for Plaintiff~~
~~State of Washington~~